



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

January 20, 2022

VIA ECF

The Honorable Mary Kay Vyskocil  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

MEMO ENDORSED

Re: *Conklin v. U.S. Immigration and Customs Enforcement, et al.*,  
No. 20 Civ. 8178 (MKV)

Dear Judge Vyskocil:

This Office represents U.S. Immigration and Customs Enforcement (“ICE”) and United States Secretary of Homeland Security Alejandro Mayorkas (collectively, “Defendants”) in the above-captioned matter. Defendants’ motion for summary judgment (the “Summary Judgment Motion”) is due January 20, 2022. I write respectfully, pursuant to Rule 9.B of the Court’s Individual Rules of Practice in Civil Cases and with the plaintiff’s consent, to request permission to file two exhibits to the Summary Judgment Motion (Exhibits 41 and 55) under seal<sup>1</sup> and two exhibits (Exhibits 2 and 74) with redactions. Consistent with this Court’s Individual Rules, Exhibits 41 and 55 will be filed under seal on ECF and electronically related to this letter motion. Redacted versions of Exhibits 2 and 74 will be publicly filed on ECF, with unredacted versions filed under seal; both sets of documents will be electronically related to this letter motion.

Exhibits 2, 41, 55, and 74 contain the plaintiff’s medical records and concern the plaintiff’s medical diagnoses and treatment. Defendants respectfully submit that sealing is appropriate notwithstanding the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), in light of the privacy interests of individuals in their medical records. *See, e.g., Barnwell v. FCI Danbury*, No. 3:10-CV-01301 (DJS), 2011 WL 5330215, at \*5 (D. Conn. Nov. 3, 2011) (noting a rebuttable presumption of openness of court filings, but granting motion to seal in light of federal law’s treatment of such records as confidential pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. 104-191 (1996)). Courts in this District have permitted the sealing of medical records, even if specific details relating to the individual’s health appear on the record. *See, e.g., United States v. Needham*, 460 F. Supp. 3d 323, 324 n.1 (S.D.N.Y. 2020); *United States v. Estevez*, No. 18 Cr. 669 (JPO), 2020 WL 1911207, at \*1 (S.D.N.Y. Apr. 20, 2020).

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<sup>1</sup> All exhibits referenced herein are exhibits to the Declaration of Jessica F. Rosenbaum, to be filed with the Summary Judgment Motion.

I thank the Court for its consideration of this request.

Respectfully submitted,

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Southern District of New York  
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cc: Counsel of Record (via ECF)

Application granted for the reasons set forth above. The Court will maintain the sealed exhibits (at docket entry no. 61) under their current level of viewing restriction (i.e., selected parties only). DE#55 resolved.

SO ORDERED.

Dated: February 22, 2022

/s/ Laura Taylor Swain, Chief U.S.D.J.